

Application No. 10/669,287  
Amendment dated March 31, 2006  
Reply to Office Action of December 14, 2005

### **REMARKS**

Applicant amended claim 1 to further define Applicant's claimed invention. The amendment to claim 1 is supported at least by Fig. 7.

In the Office Action, the Examiner rejected claims 1-72, 74-76, and 84-87 under 35 U.S.C. § 103(a) as being unpatentable over U.S. Patent No. 6,117,174 to Nolan ("Nolan") in view of U.S. Patent No. 5,785,710 to Michelson ("Michelson '710"). Claim 1, as now amended, recites an implant with upper and lower members having arcuate portions, "said arcuate portions of said upper and lower members in the first position being angled to one another over a majority of the length of said implant."

Nolan teaches an implant 10 that in an unexpanded position has surfaces that are parallel to each other along a majority of the length of the implant. (See Nolan, Fig. 11). Neither Nolan nor Michelson '710, whether alone or in proper combination, teach or suggest an implant with upper and lower members having arcuate portions that in the first position are angled to one another over a majority of the length of the implant as recited in independent claim 1 of Applicant's claimed invention. Applicant submits that the rejection of claims 1-72, 74-76, and 84-87 under 35 U.S.C. § 103(a) as being unpatentable over Nolan in view of Michelson '710 has been overcome.

The Examiner rejected claims 73 and 88 under 35 U.S.C. § 103(a) as being unpatentable over Nolan in view of Michelson '710, further in view of U.S. patent No. 4,961,740 to Ray et al.; and rejected claims 77-83 and 89-96 under 35 U.S.C. § 103(a) as being unpatentable over Nolan in view of Michelson '710, further in view of what would be obvious to one of ordinary skill in the art. Applicant submits that the rejections over claims 73, 77-83, and 88-96 are rendered moot at least because they depend from an allowable independent claim, or claims dependent therefrom.

Applicant submits that independent claim 1 is patentable and that dependent claims 2-96 dependent from independent claim 1, or claims dependent therefrom, are patentable at least due to their dependency from an allowable independent claim.

In view of the foregoing remarks, it is respectfully submitted that the claims, as amended, are patentable. Therefore, it is requested that the Examiner reconsider the

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outstanding rejections in view of the preceding comments. Issuance of a timely Notice of Allowance of the claims is earnestly solicited.

To the extent any extension of time under 37 C.F.R. § 1.136 is required to obtain entry of this reply, such extension is hereby respectfully requested. If there are any fees due under 37 C.F.R. §§ 1.16 or 1.17 which are not enclosed herewith, including any fees required for an extension of time under 37 C.F.R. § 1.136, please charge such fees to our Deposit Account No. 50-3726.

Respectfully submitted,

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